



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6941826

Date: JAN. 10, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an electrical engineering researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a researcher in the [redacted] Department of Electrical Engineering at University of [redacted].⁵ For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research relating to [redacted] [redacted] tools for [redacted] supercomputers. More specifically, I am designing a framework at [redacted] for the [redacted] exploration of memories in order to find an [redacted] design of cells and their placement [redacted] to minimize [redacted].” In addition, the record includes a letter from [redacted], professor of electrical engineering and computer science at [redacted], stating that the Petitioner’s proposed research involves “the [redacted] [redacted] tools, which are then used in [redacted] electronics.” We agree with the Director that the Petitioner’s proposed research endeavor has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The record includes letters of support discussing how the Petitioner’s proposed work stands to advance the U.S. electronics industry. For instance, [redacted] professor of electrical engineering and computer science at University of [redacted] explained that the Petitioner’s research is aimed at developing “new designs for [redacted] memories and [redacted] gates” and that this work is “crucial to the advancement of the modern electronics industry. For example, new generations of computers and smartphones are continuously being produced, and these electronics rely on faster CPUs [central processing units] and large memories that take up little space.” Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner presented the official academic record for his Master’s degree in Electrical Engineering (September 2014) from University of [redacted] and an academic credential evaluation indicating that the aforementioned degree is the foreign equivalent of a U.S. Master of Science degree in Electrical Engineering.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

substantial merit and national importance of his proposed endeavor, the record supports the Director's determination that the Petitioner meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, published and presented work, and documentation of articles that cited to his research findings. In addition, the Petitioner offered reference letters describing his expertise in electrical engineering research and his past record of success in that field.

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor. Multiple expert references identify specific examples of how the Petitioner's work has impacted the field of electrical engineering. For example, [redacted] chief scientist at [redacted] [redacted] stated that the Petitioner "created new innovative designs for [redacted] [redacted] cells" and developed "effective methods to reduce the supply voltage of [redacted] cells effectively reducing their [redacted] and substantially amplifying their [redacted]" Likewise, [redacted] a research engineer at University of [redacted] asserted that the Petitioner "designed memory [redacted] with more [redacted] without reducing their [redacted] or [redacted] by incorporating next-generation [redacted] cells with [redacted] in each cell." [redacted] further noted that the Petitioner's "memory system reduced [redacted] [redacted] and increased [redacted] as compared to contemporary memory systems."

With respect to the Petitioner's development of a method for correctly estimating [redacted] in [redacted] filters, [redacted] professor of electrical and computer engineering at University of [redacted] [redacted] indicated that the Petitioner's "method operates completely independent of [redacted] signals, and it also offers valid, accurate estimation results for the many kinds of [redacted] signals." [redacted] further stated that that "[t]hese attributes have made [the Petitioner's] method for estimating [redacted] a noteworthy and efficient tool for other researchers in the field."

The record contains additional letters from researchers who state that they relied on the Petitioner's findings in their work. As corroborating documentation regarding the significance of his work, the Petitioner provided citation evidence showing that his published work has been frequently cited by independent researchers,⁶ and that the rate at which his work has been cited is high relative to others in his field. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner's experience and expertise in his field, published work, citation evidence, record of success contributing to various research projects, and progress in electrical engineering research position him well to advance his proposed endeavor. Accordingly, we agree with the Director that the Petitioner satisfies the second prong of the *Dhanasar* framework.

⁶ For instance, the Petitioner submitted a citation index from Google Scholar indicating that his top three articles have been cited to an aggregate of more than 90 times.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In denying the petition, the Director concluded that the Petitioner did not meet this prong because the record did “not persuasively establish that the Petitioner has had a substantial impact in the field.” In addition, the Director stated that “the opinions of experts in the field” were insufficient to demonstrate that the Petitioner warrants a national interest waiver, but did not discuss any specific concerns relating to his reference letters.

We note that while the Petitioner's research contributions and the national interest in these contributions are relevant factors for consideration under prong three of the *Dhanasar* framework, there is no requirement that a petitioner demonstrate “a substantial impact in the field” in order to satisfy this prong. The Director's prong three analysis was also problematic because it did not consider the Petitioner's arguments and evidence relating to the benefit to the United States resulting from his research contributions, the impracticality of labor certification due to his unique skills, job creation associated with his proposed endeavor, and whether the national interest in his research is sufficiently urgent to warrant foregoing the labor certification process.

As a researcher specializing in the design and implementation of [] software tools, the Petitioner possesses considerable experience and expertise in electrical engineering. The record also demonstrates the widespread benefits associated with research progress in [] and [] computing. In addition, the Petitioner has documented his past successes in advancing research relating to [] electronics, [] and [] methods for digital systems, and in publishing influential research findings. Based on the Petitioner's track record of successful research and the significance of that work to advance U.S. technological interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.